UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT ANDERSON, Petitioner-Appellant, vs. THE PEOPLE OF THE STATE OF CALIFORNIA, Respondents-Appellees.	No. 22073

APPELLEE'S BRIEF

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UNITED STATES COURT OF APPEALS

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APPELLEE'S BRIEF

JURISDICTION

The jurisdiction of the United States District Court to entertain appellant's application for a writ of habeas corpus was conferred by Title 28, United States Code section 2241. The jurisdiction of this Court is conferred by Title 28, United States Code section 2253, which makes a final order in a habeas corpus proceeding reviewable in the Court of Appeals when, as in this case, a certificate of probable cause has issued.

STATEMENT OF THE CASE

Proceedings in State Courts

On September 29, 1960, appellant was found guilty in the Los Angeles Superior Court of violating

section 11501 of the California Health and Safety Code (sale of a narcotic other than marijuana). The proceedings were suspended and appellant was granted probation. No appeal was taken from this conviction. A copy of the minute order finding appellant guilty is attached as Appendix A.

On December 16, 1963, petitioner upon his plea of guilt was once again convicted in the Los Angeles Superior Court of violating section 11501 of the California Health and Safety Code. The probation previously granted on the 1960 conviction was revoked and appellant was sentenced to the state prison for each violation of California Health and Safety Code section 11501, the sentences to be served concurrently. Copies of appellant's judgments and commitments are attached as Appendix B.

With respect to the 1963 conviction, appellant filed a late notice of appeal seeking relief under Rule 31(a), California Rules of Court. The California Court of Appeal, Second Appellate District, Division Two, denied the application on October 28, 1965. A copy of the minute order denying the application is attached as Appendix C. The California Supreme Court denied a hearing on or about December 22, 1965. A copy of the minute order denying the hearing is attached as Appendix D.

In a petition filed September 16, 1964, appellant sought a writ of habeas corpus from the Marin County Superior Court. It is not clear from the petition whether appellant was attacking one or both of his convictions, the general argument running primarily to the validity of California narcotics laws. This petition was denied September 17, 1964. A copy of the petition is attached as Appendix E. A copy of the order denying the petition is attached as Appendix F.

Appellant filed a petition for habeas corpus in the California Supreme Court February 16, 1966. This petition attacked the validity of the 1963 conviction by alleging violations of the rules announced in People v. Dorado, 62 Cal.2d 338 (1965). This petition was denied March 30, 1966. A copy of the petition is attached as Appendix G.

Proceedings in the Federal Courts

Appellant petitioned the United States District Court, Northern District of California, for a writ of habeas corpus. Petitioner in his attack on the 1963 conviction alleged denial of right to counsel during interrogation. No attack on the 1960 conviction was made. This petition was denied January 20, 1966. A copy of the petition is attached as Appendix H. A copy of the order denying the petition is attached as Appendix I.

Appellant again petitioned the United States District Court, Northern District of California, for a writ of habeas corpus. In this petition appellant attacked both convictions alleging that he gave coerced statements and was denied counsel. This petition was denied June 21, 1966. A rehearing on the petition was denied July 26, 1966. A copy of the petition is attached as Appendix J. A copy of the order denying the petition and the order denying a rehearing is attached as Appendix K.

Appellant once more petitioned in an application filed May 8, 1967, the United States District Court, Northern District of California, for a writ of habeas corpus (CT 13). Judge Carter of that court denied the petition on May 8, 1967 (CT 13-14). On June 15, 1967, an order granting appellant's application for a certificate of probable cause was issued and appellant was allowed to appeal in forma pauperis (CT 21-22).

APPELLANT'S CONTENTIONS

1. The probation granted in respect to his 1960 conviction was revoked after the probationary period had expired.

2. The use of his 1960 conviction to increase the punishment on his 1963 conviction violates his constitutional protection against double jeopardy.

SUMMARY OF APPELLEES' ARGUMENT

THE DISTRICT COURT PROPERLY DENIED APPELLANT'S APPLICATION FOR HABEAS RELIEF.

ARGUMENT

We are persuaded that the District Court Judge correctly disposed of appellant's application for habeas relief. We rely upon the language of his order as our argument in this case. The order was as follows:

> " * * * Petitioner is presently confined at San Quentin State Prison pursuant to two state court convictions for violations of California Health and Safety Code § 11501. In this application the petitioner contends that the sentence of probation he received pursuant to his first conviction, #231189, was revoked after the probationary period had expired. Secondly, it is contended that the use of the prior conviction to increase his sentence in #278150 subjects the petitioner to double jeopardy.
>
> "With respect to these contentions the law is clear that the imposition of heavier penalties against those persons with prior convictions does not violate any constitutional principles. See Spencer v. Texas, 385 U.S. 554 (1967). Petitioner's

attack on #231189 is premature, for having found that he is serving a valid term of imprisonment under #278150, the rule of McNally v. Hill, 293 U.S. 131 (1934) precludes this Court's inquiry into the prior conviction.

"Accordingly, IT IS ORDERED that this action as set forth in the petition for a writ of habeas corpus be, and the same is hereby dismissed." (CT 13-14).

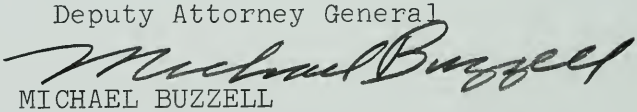
CONCLUSION

For the reasons stated above, appellees respectfully submit that the order of the District Court denying appellant's petition for the writ of habeas corpus should be affirmed.

Dated: October 5, 1967.

THOMAS C. LYNCH, Attorney General
of the State of California

DERALD E. GRANBERG
Deputy Attorney General



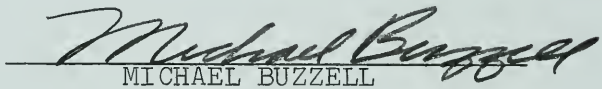
MICHAEL BUZZELL
Deputy Attorney General

Attorneys for Respondents-Appellees.

CERTIFICATE OF COUNSEL

I certify that in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit and that, in my opinion, this brief is in full compliance with these rules.

Dated: October 5, 1967.



MICHAEL BUZZELL
Deputy Attorney General

A P P E N D I C E S

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

MINUTES

Department No. 111

SEP 29 1960 19 Present Hon. JOHN F AISO Judge

THE PEOPLE OF THE STATE OF CALIFORNIA, vs

ROBERT ANDERSON 231189

Trial is resumed, People's cause having been submitted on preliminary transcript. Deputy District Attorney John C Galliano and the Defendant with counsel, F A Spindell, present. Weldon Daniels Lockhart Jr is sworn and testifies for the People on further cross-examination. People rest. Robert Anderson is sworn and testifies in his own behalf. Defendant's Exhibit A (shirt and brown paper bag) is marked for identification. Defendant rests. The Court adjudges defendant "Guilty". A Probation Officer's report is ordered. Further proceedings continued to October 26, 1960, 9 A M. Remain on bail. By stipulation, defendant's Exhibit A is returned to defendant in open Court.

This Minute Order has been entered on OCT 4 '60
HAROLD J. OSTLY, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles.
By Virgil Kenny Deputy

PROB.	/	AUD.		DMV	
LAPD	/	CSHR.		CYA	
CO.J.		JUV.		C. CLK.	/
SHER.		PSYC.		MISC.	

MINUTES

10M414Y—11/60

A

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

MINUTES

Department No. 111

OCT 26 1960 19 Present Hon. JOHN F AISO Judge

THE PEOPLE OF THE STATE OF CALIFORNIA, vs

ROBERT ANDERSON 231189

Defendant with counsel, F A Spindell, present. Proceedings suspended. Probation granted for three years.

- [x] Spend first 8 months in County Jail. (240 days)
- [x] Road Camp or Honor Farm Recommended.
- [ ] Good time allowed if earned.
- [ ] Pay fine of $_____ through Probation Officer in such manner as such officer shall prescribe
- [ ] Make restitution through Probation Officer in such amounts and manner as such officer shall prescribe.
- [ ] Pay any judgment arising out of this matter, when it becomes final in such amounts and manner as Probation Officer shall prescribe.
- [ ] Abstain from all alcoholic beverages and stay out of places where they are the chief item of sale.
- [x] Not use or possess any narcotics or narcotic paraphernalia and stay away from places where addicts congregate.
- [x] Not associate with known narcotic users or sellers.
- [ ] Have no blank checks in possession, not write any portion of any checks, not have bank account upon which may draw checks.
- [ ] Not gamble or engage in any bookmaking activities or have paraphernalia thereof in possession, and not be present in places where gambling or bookmaking is conducted.
- [ ] Not associate with _____
- [ ] Stay out of places where homosexuals congregate.
- [ ] Not associate with children under 14 years except in presence of responsible adults.
- [ ] Cooperate with Probation Officer in plan for psychiatric, psychological or other treatment.
- [x] Seek and maintain employment as approved by Probation Officer.
- [ ] Support dependents.
- [x] Maintain residence as approved by Probation Officer.
- [ ] Surrender drivers license to Clerk of Court to be returned to Department of Motor Vehicles, and not drive a motor vehicle for the first year after release from custody nor until lawfully licensed.
- [x] Obey all laws, orders, rules and regulations of Probation Department and of the Court.

Remanded. Bail exonerated.

This Minute Order has been entered on OCT 31 '60

HAROLD J. OSTLY, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles.

By Virgil Henry Deputy

PROB. /	AUD.	DMV
LAPD /	CSHR.	CYA
CO. J. /	JUV.	C. CLK.
SHER.	PSYC.	MISC.

MINUTES

T6M414—4/59

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 111 HON. JOHN F. AISO, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. ROBERT ANDERSON, Defendant	No. 231189 PROBATION 3 YEARS COUNTY JAIL 8 MONTHS

Los Angeles, California, Wednesday, October 26, 1960; 9:00 a.m.

On the above date this matter came on regularly for hearing before Hon. John F. Aiso, Judge of the Superior Court of the State of California, in and for the County of Los Angeles; the People being represented by J. Galliano, Deputy District Attorney of Los Angeles County; the defendant being present with counsel, F. A. Spindell; whereupon the following proceedings were had, to wit:

(Ward E. McConnell, Official Reporter.)

THE COURT: People against Anderson. Defendant Anderson is before the Court with his counsel, Mr. Spindell, in this case No. 231189. The Court found defendant guilty of violating Section 11501 Health and Safety Code of this State. Now is the time for pronouncement of judgment and sentence. Do you waive further arraignment for judgment?

MR. SPINDELL: Waive further arraignment for judgment, your Honor.

THE COURT: The Court has read and considered the Probation Officer's report. Is there any legal cause why judgment and sentence should not be pronounced and sentence passed?

MR. SPINDELL: No legal cause. I would like to be heard.

THE COURT: Very well.

MR. SPINDELL: Anything I am going to say, your Honor, I don't want posaibly to be construed as something said in mitigation of the nature of the offense, a heinous offense, but I would like your Honor once more to consider what the Probation Officer has to say about Mr. Anderson as a person. He described him as a person susceptible but if he is susceptible, I believe, your Honor, may be, seriously, susceptible to a program of rehabilitation. He is not a letter writer, he is not much of a talker, but he has expressed to me, your Honor, it seems a sincere desire to change his surroundings to get out of the milleu and start anew. Again, your Honor, I want to point something the Probation Officer pointed to, 12 years of service --

THE COURT: Counsel, let me advise you this, I am not going to follow the recommendations of the Probation Officer in this case.

MR. SPINDELL: There will be no further argument, your Honor.

THE COURT: He is going to have to do some County Jail time.

MR. SPINDELL: That he is more than aware of.

THE COURT: Are you ready to go today?

THE DEFENDANT: Yes, sir.

THE COURT: Proceedings are suspended. You are placed upon probation for a period of three years, subject to standard conditions 1, 6, 7, 14, 16 and 18.

You will do 8 months or 240 days in the County Jail, road camp or honor farm recommended as a condition of probation;

No. 6, you will not use or possess any narcotics or narcotic paraphernalia and stay away from places where addicts congregate;

No. 7, you will not associate with known narcotic users or sellers;

No. 14, you will seek and maintain employment as approved

by the Probation Officer;

And, 16, you will maintain a residence as approved by the Probation Officer;

And, 18, you will obey all laws, orders, rules and regulations of the Probation Department and of this Court.

You are ordered remanded to do your 8 months as a condition of probation. Bail is ordered exonerated.

STATE OF CALIFORNIA, County of Los Angeles

No. 231189

I, WILLIAM G. SHARP, County Clerk and Clerk of the Superior Court for the county and state aforesaid, do hereby certify the foregoing to be a correct copy of the original

Minutes of September 29, 1960, M nutes of October 26, 1960, Proceedings of October 26, 1960, in the case of the People vs. ROBERT ANDERSON

on file and of record in my office, and that I have carefully compared the same with the original.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Superior Court.

Dated: September 28, 1967

WILLIAM G. SHARP, County Clerk and Clerk of the Superior Court of the State of California for the County of Los Angeles

By Katherine L. Mills, Deputy

THIS CERTIFIED COPY IS GIVEN FREE OF CHARGE PURSUANT TO LAW SOLELY UPON THE CONDITION THAT IT IS TO BE USED FOR OFFICIAL BUSINESS AND/OR TO DETERMINE ELIGIBILITY FOR VETERANS BENEFITS.

76C135M—Cdb 7-66

H. F. Lines
W. Fine 9 gen 007638 C. I. M.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

1963 DEC 31 AM 11:37

G.C. ADMITTANCE

JUDGMENT

Department No. 108

December 16 1963 Present Hon. NEWELL BARRETT Judge

THE PEOPLE OF THE STATE OF CALIFORNIA, vs

278150

ROBERT ANDERSON

Matter of probation and sentence is called for hearing. Deputy District Attorney F. Linn and the Defendant with counsel F. A. Spindell, present. Probation denied. Sentenced as indicated.

Whereas the said defendant having duly pleaded guilty in this court of the crime of VIOLATION OF SECTION 11501, Health and Safety Code, a felony, as charged in Count 7 of the indictment as amended; prior conviction having been found true as alleged, to wit: crime of 11501 Health and Safety Code, a felony, Superior Court of the State of California, Los Angeles County, September 26, 1960

It is Therefore Ordered, Adjudged and Decreed that the said defendant be punished by imprisonment in the State Prison for the term prescribed by law.

Other Counts dismissed.

It is further Ordered that the defendant be remanded into the custody of the Sheriff of the County of Los Angeles, to be by him delivered into the custody of the Director of Corrections at the California State Prison at Chino.

This minute order was entered
DEC 19 1963
WILLIAM G. SHARP, COUNTY CLERK
Clerk of the Superior Court BY C. A. RHETTA DEPUTY
C. A. Rhetta

This Minute Order has been entered on
WILLIAM G. SHARP, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles.

By Dep.

Prob. Aud. DMV
LAPD Cshr. CYA
CO. J. / Juv. C. Clk.
Sher. / Psyc. Misc.

JUDGMENT — State Prison (Men)

THE WITHIN INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE.
ATTEST:

CALIFORNIA STATE PRISON AT SAN QUENTIN
BY
RECORDS OFFICER
(AFFIX SEAL)

7J307B—7/61

I do hereby certify that the foregoing is a true and correct copy of the original on file in my office.
Dated:
WILLIAM G. SHARP, County Clerk By Deputy

B

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

MINUTES OF DIVISION TWO

October 28, 1965

Ext. No. 65-322	People, etc. vs Anderson

THE COURT:

Application pursuant to Rule 31(a) is denied.

CLAY ROBBINS, JR., Clerk of the Court of Appeal, Second Appellate District, State of California, do hereby certify that the foregoing is a true and correct copy of an order of this Court, as shown by the records of my office.

Witness my hand and the seal of this Court this 26TH day of SEPTEMBER A.D., 1967

CLAY ROBBINS, JR., Clerk

By C. Porter

Deputy Clerk

ORDER DENYING HEARING

AFTER JUDGMENT BY DISTRICT COURT OF APPEAL

2nd District, Division 2, Ext. No. 65-322

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

PEOPLE

v.

ANDERSON

Defendant's petition

or hearing DENIED.

I, WILLIAM L. SULLIVAN, Clerk of the Supreme Court of the state of California, [illegible] certify that the foregoing is a true copy [illegible] by the records of my office.

Witness my hand and the seal of the Court this 27th day of September, A.D. 1967

WILLIAM L. SULLIVAN, Clerk

By R. Matteoli, Deputy Clerk

FILED

DEC 22 1965

WILLIAM L. SULLIVAN, Clerk

By [illegible] S. F. Deputy

Chief Justice

73-677 6 65 500 DJP OSP

Robert Anderson
Post Office Box A-21859
San Quentin, Marin, California

40863

1 On Original Application for Habeas Corpus

2 In The Superior Court of the State of California, In And For The County Of

3 Marin, San Rafael, California.

4 I N D E X

16 C I T A T I O N O F A U T H O R I T I E S

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E

CASES CITED

In Re Hess (1955)45 Cal. 171

In Re Oliver 333 U. S. 257

Cooke v.United States, 267 U. S. 517-536-537

In Re Diquiro, 100 Cal. App. 2d 2000, 201

People v. Robinson, 107 Cal.App. 211

Burns v. Ohio (1959) 360 U. S. 252

Griffin v. Illinois (1956) 351 U. S. 12

Smith v. Bennett (1961) 365 U. S. 700

Bullock v.South Carolina (1961) 365 U. S. 292

Sunal v.Large, 332 U. S. 174 at 181

United States ex rel Mills v. Hagen 77 Fed Supp. 15

People v. Montgomery 51 Cal. 2d 444

Behrens v. Heronimus, 166 F. 2d 245

Ker v. California (1963) 374 U. S. 23

Boyd v. United States (1886 (116 U.S. 616

Carter v. United States(1963) 314 F. 2d 386

Townsend v. Sain (1963) 372 U. S. 391

In Re Prawle (1947) 31 Cal. 2d 43, 46, 51 (Writ Denied)

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

ROBERT ANDERSON
PETITIONER
ON APPLICATION FOR WRIT OF
HABEAS CORPUS

REFER: 231189 and 278150

PETITION FOR WRIT OF HABEAS CORPUS

To: The Presiding Judge, Superior Court of the County of Marin
State of California, San Rapheal, California.

The petition of Robert Anderson, respectfully follows; and in which he applies for a Writ of Habeas Corpus. Subpoena Duces Tecum, by his valid and verified petition, and in this behalf sets forth the following facts and causes for the issuance of the Writ:

I

That he the aforesaid Robert Anderson, is imprisoned within the California State Prison at San Quentin, California, County of Marin and under the custody and control of Mr. Lawrence E. Wilson, Warden of the aforesaid prison.

II

1. That although he is presumed to be lawfully imprisoned, detained, confined and restrained of his liberty by Mr. Lawrence E. Wilson, San Quentin State Prison, that the said imprisonment, detention and confinement is as a matter of law illegal, the petitioner is now and has since the 31st day of December, 1963, been confined on a "plea of guilty", and confined on a "plea of guilty", pursuant to an offense as prescribed by the California Health and Safety Code Section 11501 with a prior as prescribed and defined by California Health and Safety Code Section 11504 (See Exhibit "B" pages 2 and 4)

2. That in addition the Petitioner has a further restraint placed upon him by circumstances of his indegency, and therefore cannot secyre the records that would, by his honest belief, show that he is entitled to either all the relief prayed for in his application for Writ of Error Coram Nobis, or that in any event he be allowed to take advantage of the new ruling of the Courts, which to the petitioner seems to indicate that

the Courts are inclined in certain cases to consider, the mandatory to severe.

III

The Petitioner Contends imprisonment is illegal, and the illegality thereof consists in this, to wit:

1. That the Health and Safety Code Section 11501 deprived the petitioner of his day in Court, even before he is charged officially with the offense.

2. That the Health and Safety Code is preempted from the imposition of a minimum Term of Ten Years for a second offense by Section 644 of the California Penal Code.

3. That the Health and Safety Code deprives the Court of its most important function, the granting of a fair and impartial trial, because it imposes no restraints upon the officers in the investigation and the procurring of evidence.

4. That for the above reasons the Health and Safety Code Section 11501, 11851 and especially the retrospective part of Section 11504 which declares: (Added by Stats. 1961, Ch. 274, Section 5)

"As used in this Article (Art 1) "Illegal, Sale, Possession, Administration and Transporting". "Felony Offense" and offense for which the law prescribes imprisonment in the state prison as either an alternative or the sole penalty, "regardless of the sentence the particular defendant received" (this portion petitioner believes to be retrospective) punishable as a Felony. Places the petitioner in double jeopardy for a prior offense.

5. That the petitioner believes this Court has the power to modify the judgment as entered. (See Exhibit "B" page 4)

IV

The Constitutional Provisions and Statutory provisions are contained in Petitioner's Points and Authorities.

V

The facts of this case are contained in the arrest and arraigment on a Charge of Possession of Narcotics (See Exhibit "B" lines 18 through 28)

That the most persuasive facts are contained in the arresting officer's testimony on a preliminary hearing on the possession charge, although

Your petitioner as being: "watery eyed, and of drowsy of appearance" or words of that general meaning and effect. And with due regard to the Courts below and not in disregard of their and this Court's task of protecting the public interest, petitioner respectfully urges this Court to subpoena the records for three very important reasons, namely:

(1) So that the Court will not deny the petition outright; and

(2) To eliminate the necessity of petitioner's having to reestablish facts that the prosecution through its own witnesses have already established and so testified; and

(3) To establish a claim to have recent rulings applied to the facts therein disclosed to this particular case.

VI

Juriddictional Statement:

The Petitioner relies on this application and urges that in good faith and pursuant to the guarantees of Article 1 Section 5 of the Constitution of the State of California; and Article 1, Section 9, paragraph 2,, and Article 111 Section 2 of the United States Constitution, as secured by the Due Process Clause of the Fourteenth Amendment are applicable to this petition. The Statutory Authorities are embodied in the Case Authorities cited.

Petitioner would refer the court to his Memorandum of Points and Authorities In Support of Petition For A Writ of Habeas Corpus for case law which supports petitioners contentions.

VII

Petitioner prays that this Honorable Court issue a Writ of Habeas Corpus directed to Mr. Lawrence E. Wilson, Warden, San Quentin Prison, and respondent above-named, and a Writ of Subpoena Duces Tecum directed to the respondent Court directing the compiling of all the oral proceedings in connection with the case of People of the State of California v. Robert Anderson, Case Numbers 231189 and 276150, during the proceedings herein described, or an alternative show cause order to show why petitioner should not be released on the grounds aforementioned in this petition for a Writ of Habeas Corpus.

Respectfully Submitted,

Robert Anderson
A-81859

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR A WRIT OF HABEAS CORPUS

Petitioner herein sets forth his points and authorities in support of his petition for writ of habeas corpus.

Point 1: Confinement:

That a prisoner in custody has the Constitutional right to a judicial enquiry into the true cause of his imprisonment has been long an established fact in both this State and in the Federal Courts. As stated by the Supreme Court in the case of In Re Hess (1955) 45 Cal. 2d 171, 183; 288 P. 2d 5.

"Due process of law requires that an accused be advised of the charges against him in order that he may have a reasonable opportunity to prepare and present his defense and not be taken by surprise by evidence offered at his trial. (In Re Oliver, 333 U.S. 257, 273 (68 S. Ct. 499 92 L. Ed. 682); Cooke v. United States, 267 U.S. 517, 536-537 (45 S. Ct. 390, 69 L. Ed. 767; In Re Diquiro, 100 Cal. App. 2d 260, 261 (223 P. 2d. 263) see also People v. Robinson, 107 Cal. App. 211, 217 (290 P. 470)

Where it is alleged that a person incarcerated in a State Prison by legal process; and the petitioner contends the contrary, the Supreme Court of the United States declared in Burns v. Ohio, (1959) 360 U.S. 252, 256, and in Griffin V. Illinois, 351 U.S. 12 that:

"...Such denial to furnish the petitioner the necessary records, transcripts, etc., is a denial of Equal Protection of Law and of Due Process, for such a refusal on the part of the States hinders the petitioner from prosecuting the Writ of Habeas Corpus or any other mode of redress"

In Smith v. Bennett, (1961) 365 U.S. 700 the Supreme Court of the United States declared that:

"...There can be no equal justice where the kind of a trial or treatment a man gets depends upon the amount of money he has" Griffin v. Illinois, supra, at 19.

Point 2: Habeas Corpus has been allowed to make a record (Bullock v. South Carolina (1961) 365 U.S. 292); Or has been to take advantage retroactively of a decision of law, Sunal v. Large, 332 U.S. 174 at 181; (67 S. Ct. at 1592

that one of the exceptional circumstances justifying the use of habeas corpus to raise a point that could have been but was not appealed is "where the law was changed after the time for appeal had expired".

Even if facts relied on could have been raised on appeal by writ of error with bill of exceptions, they may still be raised by habeas corpus where they involve not merely errors of law but violations of basic constitutional safeguards of life, liberty and the pursuit of freedom, and such rule applies regardless of weather defendant was represented by counsel at the trial stage. United States ex rel. Mills v. Ragen, 77 Fed. Supp. 15.

If in the application of the State of California rules of practice and procedure in trials and appeals, an accused's liberty has been violated or jeopardized by denial of his immunities under the Federal Constitution, regarding rights of accused to a speedy and public trial, conferring equal protection of the law upon all persons within a State, accused is entitled to an investigation of the facts preceding and attendant upon his conviction by habeas corpus, but such investigation may not be initiated by a motion to vacate such judgment People v. Montgomery, 51 Cal. 2d. 444.

And, habeas corpus provides a remedy for jurisdictional and consitiutional errors at trial, without limit of time. Behren v. Heronimus, 166 F. 2d 245; United States v. Smith, 333 U.S. 469.

Point 3:

The petitioner believes that the Courts of the State of California are making a sincere effort to reevaluate and define its Narcotics Laws as per reports in the newspapers of judicial conferences in regards to this most crucial matter and particularly in the field of severe and harsh punishment as reflected in the United States Supreme Court's, comments upon the California Supreme Courts decision of People v. Cahan, (1955) 44 Cal. 2d 434, quoted with approval Kev v. California, (1963) 374 U.S. 23.

Point 4:

The decisions above and below reflect the Constitutional provisions as applies to this petition, therefore petitioner respectfully urges this Court's acceptance of this petition with the reservation that petitioner be granted authority to file a traverse if a show cause order is issued.

The facts of this case are contained in the original arrest upon the charge of illegal possession, petitioner readily concedes that he was admitted to bail, but it is urged that the actions come under the principle "that no

arrest is made proper retroactively by what is found after such search or arrest and he relies on Boyd v. United States, (1886) 116 U.S. 616, 630; Carter v. United States, (1963) 314 F.2d. 386 and Townsend v. Sain, (1963) 372 U.S. 391

VI

JURISDICTION:

The judgments of the Superior Court of the State of California in and for The County of Los Angeles, The Honorable Newell Barnett, Judge, Department 108, Presiding.

A. Judgment entered 22 November 1963 (on guilty plea) and commitment to the California Department of Corrections followed on 31 December 1963 (See Exhibit B. page 2.)

B. Judgment of denial of application for Writ of Error Coram Nobis entered on 19 May 1964.

The judgment of this Court is invoked pursuant to California Penal Code Sections 1473, 1474, 1475, 1480, 1484, 1485 and 1506; In Re Bramble, (1947) 31 Cal. 2d.43, 46, 51 (187 P.2d 411)

"Every person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint" Penal Code 1473 (2,3) The scope of inquiry at the hearing on the writ includes consideration of "any fact to show either that his imprisonment or detention is unlawful, or that he is entitled to his discharge" (Pen. Code 1484) and "if no legal cause is shown for such imprisonment or restraint, or for the continuation thereof,... (the) court or judge must discharge such party from the custody or restraint under which he is held" (Pen. Code 1485) which means that the petitioner may be discharged from illegal conditions of restraint although not from all restraint. Since this is the function and scope of habeas corpus, we conclude that it is proper and desirable to interpret section 1506 of the Penal Code in its use of the word "discharge" as being fully a broad as the scope of the writ itself."

Petitioner contends that the power of the Courts has been enlarged by judicial reasuring of some of the eminent Judges both State and Federal in the field of Narcotic prosecutions. And further that the judiciary tribunals of this State has been carefully investigating the implementations of police

officials in carrying the Health and Safety Code into execution and in some instances are revising the judgments to comply with the requirements of fundamental fairness, and in Griffin v. Illinois, (1956) 351 U.S. 12, 25-26, that the Court's powers to say how far back into the past a newly made rule, even one declaring constitutional rights, must be applied. (Frankfurter, Justice, concurring.)

PRAYER

Petitioner prays that this Honorable Court issue a Writ of Habeas Corpus directed to Mr. Lawrence E. Wilson, Warden, San Quentin Prison, and respondent above named; and;

Petitioner further prays this Honorable Court issue a Writ of Subpoena Duces Tecum directed to the Honorable Newell Barrett, Judge, the Superior Court of the State of California, in and for the County of Los Angeles, Department 108, to forward to this Honorable Court all the records, arrest reports, preliminary examinations, plea, judgment and sentence, or an alternative show cause order to show why petitioner should not be released on the grounds aforementioned in this petition for a writ of habeas corpus.

Respectfully Submitted,

Robert Anderson

A-81859

CALIFORNIA CONSTITUTION

ARTICLE I:

Section 1. All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness.

Section 3: The State of California is an inseparable part of the American Union, and the Constitution of the United States is the supreme law of the land.

Section 5: The privilege of the writ of habeas corpus shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require its suspension.

ARTICLE I Section 19. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable seizures and searches, shall not be violated; and no warrant shall issue, but on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized. (Emphasis Petitioner's)

UNITED STATES CONSTITUTION

ARTICLE VI:

Section 2: This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

FIRST AMENDMENT:

Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. (Emphasis Petitioner's)

FOURTEENTH AMENDMENT:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CALIFORNIA PENAL CODE: HABEAS CORPUS SECTION
(Title XII ch. I)

Section 1473: (Who may prosecute writ) : Every person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of Habeas Corpus to inquire into the cause of such imprisonmentor restraint. (Enacted 1872 ; Am. CodeAmdts. 1873-74, p. 454.

Section 1474:(Application for, how made)(Contents of Petition:Verification)

Application for the writ is made by petition either by the party for whose relief it is intended or by some person in his behalf, and must specify:

1. That the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty, the officer or person by whom he is so confined or restrainod, and the place where, naming all the parties, if they are known, or describing them, if they are not known;

- - - - - - - - - - - - -

2. If the imprisonment is alleged to be illegal, the petitioner must also state in what the alleged illegality consists;
3. The petition must be verified by the oath or affirmation of the party making the application. (Enacted 1872)

Annotation: See 11 McK.Dig. Habeas Corpus ##15-54; Cal. Jur. 2d Habeas Corpus ## 74-77-78; 25 Am. Jur. 235.

Section 1480:

Return, what to contain: (Signature and Verification)
The person upon whom the writ is served must state in his return, plainly and unequivocally:

1. Whether he has or has not the party in his custody, or under his power or restraint;

2. If he has the party in his custody or power, or under his restraint, he must state the authority and causes of such imprisonment or restraint;

3. If the party is detained by virtue of any writ, warrant , or other written authority, a copy thereof must be annexed to the return, and the original produced and exhibited to the court or judge on the hearing of such return;

4. If the person upon whom the writ is served had the party in his power or custody, or under his restraint, at any time prior or subsequent to the date of the writ of habeas corpus, but has transferred such custody or restraint to another, the return must state particularly to whom, at what time and place, for what cause, and by what authority such transfer took place;

5. The return must be signed by the person making the same, and except when such person is a sworn public officer, and makes such return in his official capacity, it must be verified by his oath (Enacted 1872)

2. If the imprisonment is alleged to be illegal, the petitioner must also state in what the alleged illegality consists;
3. The petition must be verified by the oath or affirmation of the party making the application. (Enacted 1872)

Annotation: See 11 McK.Dig. Habeas Corpus ##15-54; Cal. Jur. 2d Habeas Corpus ## 74-77-78; 25 Am. Jur. 235.

Section 1480:

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3. If the party is detained by virtue of any writ, warrant , or other written authority, a copy thereof must be annexed to the return, and the original produced and exhibited to the court or judge on the hearing of such return;

4. If the person upon whom the writ is served had the party in his power or custody, or under his restraint, at any time prior or subsequent to the date of the writ of habeas corpus, but has transferred such custody or restraint to another, the reurn must state particularly to whom, at what time and place, for what cause, and by what authority such transfer took place;

5. The reurn must be signed by the person making the same, and except when such person is a sworn public officer, and makes such return in his official capacity, it must be verified by his oath (Enacted 1872)

Robert Anderson
Post Office Box A-81859
San Quentin, Tamal, California

On Original Application for Habeas Corpus

In The Superior Court Of The State Of California, In And For The County Of Marin, San Rapheal, California.

V E R I F I C A T I O N

UNITED STATES OF AMERICA)
STATE OF CALIFORNIA) : SS
COUNTY OF MARIN)

I, Robert Anderson, being first duly sworn, depose, and say:

Taht I am the Petitioner in the above entitled matter; that I have prepared and read the foregoing petition and know the contents thereof; that the same id true of his own knowledge, except as to those matters which are therein stated on information or belief, and as to those matters that I believe it to be true.

I declare under the penalty of perjury that this is correct and true.

Robert anderson
ROBERT ANDERSON
A-81859
San Quentin, Tamal, California

Robert Anderson
Post Office Box A-81859
San Quentin, Tamal, California

On Original Application for Habeas Corpus

In The Superior Court Of The State Of California, In And For The County Of Marin, San Rapheal, California.

PROOF OF SERVICE BY MAIL

UNITED STATES OF AMERICA)
STATE OF CALIFORNIA) SS:
County of Marin)

I, Robert Anderson, being duly sworn, deposes and says:

That I am the affiant in the above entitled matter; that I am over the age of eighteen years, a citizen of the United States, a resident of the County of Marin, San Quentin, California, and sole party to the within PETITION FOR A WRIT OF HABEAS CORPUS.

That I did on the 14 day of September 1964, submit for depositing in the United States Mails at the Post Office at San Quentin, with first-class postage prepaid thereon, a true (copy)(s) of the within document for the following persons; (with exhibits attache to Court's Original and District Attorney of Marin County) and that there is a regular communication by mail between San Quentin and these destinations:

Original & two Copies to:	Clerk's Office, Superior Court Marin County, San Rapheal, Calif
One (1) Copy to:	Clerk's Office, Superior Court Los Angeles, California Dept. 108
One (1) Copy to:	Office of the District Attorney San Rapheal, California
One (1) Copy to:	Attorney General's Office Library & Courts Building Sacramento, California
One (1) Copy to:	Mr. Laurence E. Wilson, Warden.
One (1) Copy to:	Robert Anderson

I declare under the penalty of perjury that this is correct and true.

Robert Anderson
A-81859
San Quentin, California

Bugbee

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MARIN

MATTER OF THE APPLICATION

OF ~~PLAINTIFF~~

vs.

ROBERT ANDERSON

Petitioner

~~Defendant~~

No. 40803

Dept. No. 4

SUBMITTED

Date: Sept 17, 1964 Briefs Yes: _____ No: _____

MINUTE ORDER

Petition received September 17, 1964 at 9:00 A.M.

Petition denied September 17, 1964 at 9:45 A.M.

The within instrument is a correct copy of the original on file in this office.

ATTEST: SEP 26 1967

GEO. H. GNOSS
County Clerk and ex-officio Clerk of the Superior Court of the State of California In and for the County of Marin.
By _____ Deputy Clerk

Dated: Sept 17, 1964

SAMUEL W GARDINER s/
Judge of the Superior Court

F

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SAN FRANCISCO

t Anderson, A-81859 Petitioner People of the State of fornia, Lawrence E. o, Warden, et. al., Respondent	PETITION FOR WRIT OF HABEAS CORPUS

he Honorable Justice and Associate Justices of the above entitled
ourt.

, the petitioner in the above cause, who being duly sworn upon
oposes and says that I am an American citizen and over the age
wnty-one (21) years by birth.

he petition of Robert Anderson, respectfully shows: that he, the
etitioner is unlawfully imprisoned, detained, confined and restrained
i liberty by the Warden, Lawrence E. Wilson, of Marin County, at
Quentin, Prison, in the State of California: by virtue of presently
lined illegal judgment and sentence. That the illegality thereof
lt in this, to wit:

JURISDICTION

he jurisdiction of this Honorable Court is invoked upon, pursuant
3 U.S.C.A. 2254; Rule 83.

Related Notice of Appeal was filed in the District Court of Appeal,
Appellate District, Los Angeles County, Oct. 20, 1965, and denied
2, No. Ext, 65-322. Motion For Hearing was filed in the Supreme
t of California, San Francisco, November 29, 1965, and denied Dec-
r 22, 1965, by post card, case no 2 Ext. 65-322.

Your petitioner was convicted in the Superior Court of the State of
ornia, in and for the County of Los Angeles, on December 16, 1963,
e crime sales of narcotic, a violation of 11501, of the Health and
y Code.

After entering a plea of guilty, petitioner was subsequently priored
a misdemeanor and sentenced to the term prescribed by law, five years
fe, and ten years to life and thereafter received by the California
ctional Authorities where he is presently confined.

STATEMENT OF THE CASE

The alleged crime occured over a period of 3 months. Petitioner's
partner was given some money to buy narcotics by a police officer.
tioner was observe by police walking down the street with a lady.
tioner's crime partner stopped him and his lady friend on the street
d a short conversation. Later his crime partner goes in a hotel,
out and hand the police some narcotic.

Petitioner was arrested on September 6, 1963, on a secret indict-
nd charged with eight (8) counts of Sales of Narcotics. Petitioner
mpromised by police officers and his attorney on seperate occas-
to plead guilty, to Count (7) and they would drop all other counts.
n December 16, 1963, petitioner pled guilty to count (7) seven and
plored with a misdemeanor that he had did time for at the Honor Ranch.
tioner was sentenced on his prior and present conviction to: five (5)
s to life and ten (10) years to life.

CIRCUMSTANCES

ore important, the interrogating officers not only failed to in-
petitioner of his right to silence, but they also received exception-
emaging information before telling him to plead guilty to count

they would drop the other counts. Petitioner was promised a jail sentence.

ALLEGATIONS

Accordingly, the conduct of interrogating officers had deprived ner of his right to due process of law, and thus impeding con- tional provisions of the sixth and fourteenth Amendments to the States Constitution; and Art. I, Sec. 13, of the California tution.

By failure to apprise him of the privilege against self-incrim- n.

By failure to furnish counsel during interrogation.

he well known criterion supportive to the facts of this case specif- out-lined in People V Rosado, 62 A.C. 351 Id 8. "Defendant's ion was not admissible in evidence where it was made during an gation no longer a general inquiry into an unsolved crime, but on defendant who was then in custody, where the authorities did fectively inform defendant of his right to counsel or absolute o remain silent, where no evidence established his waiver of these and where the authorities process' of interrogation lent to eli- gincriminating statements." Thus, the Courts recent ruling in this ast bear resemblance to the facts of this case.

Accordingly, petitioner rely logically upon the sixth and fourteenth ent of the United States Constitution ; and Art. 1, Sec. 13 of the nia Constitution; for support of his contentions of ineffective entation by counsel. Recent decisions on this subject, infact in- s that counsel has fall far short in effective representations ose V Wilson, (July 1965), Case No. 43395; Howard Regan V Wilson,

1965), Case No. 43149; Hoover v Georgia, 350, U.S. 85; Pru-
Dickson, (9th Cir. 1968), People V Ie Garvey, 61 Cal. App. 21
, "The record indicates that the appearance was rather pro forma
lous and 'active'".

early as 1929 the Circuit Court of Appeals for the Fourth Circuit
the Supreme Court of West Virginia as correctly stating the foll-
ule:

fore receiving a plea of guilty in a criminal case, the court
hould see that it is made by a person of competent intelligence,
freely and voluntarily, and with full understanding of it's na-
ure and effect and of the facts on which it is founded".
que VS U.S. (4th Cir. 1929), 34 F. 2d 97, 98, In the Federal Courts,
rinciple has become a rule; "...The Court... shall not accept the
thout first determining that the plea is made voluntarily with
nding of the nature of the charge..." Rule 11, federal rules
nal procedure, 18 U.S.C.A.

his rule is stated in mandatory language and the court is not
lieved of the duty which it imposes solely because the accused,
here, is represented by counsel of his choice." Emphasis added
, VS Davis (7th Cir. 1954), 212 F. 2d 254, 267; The Court in
inted our real notice of the true nature of the charge against
right granted to the accused by the constitution and it is in-
ble to a valid plea. The understanding of the defendant is not
for conjecture by the court. The language of the case implies
the court to satisfy itself that these requirement are fulfilled.
lea of guilty, unlike a mere admission or extra-judicial confess-
its every material fact charged and should not be often proper

by counsel and with full understanding of the consequences".
V U.S. (6th Cir. 1969) 205 F. 2d 155, 158.

The increasing concern over the role of the court in accepting a plea is illustrated by the preliminary draft of the proposed ents to Rules of Criminal procedure for the United States District . This draft, submitted in December, 1962, by the committee on of practice and procedure of the judicial conference of the United proposes the following amendment to rule 11 for the guidance of District Courts:

The Court...shall not accept such plea... without first (a) making such inquiry as may satisfy it that the defendant in fact committed the crime charged and (b) addressing the defendant personally"...

(Proposed Amendment emphasized)

To sanction petitioner's claim of a constitutional violation, see n V Dono, __U.S. 84 S. Ct. (June 22, 1964. "It is now axiomatic that ndant in a criminal case is deprived of due process of law if his ction is founded in whole or in part, upon an involuntary confession, regards for the truth or falsity of the confession, Rogers V nd, 365 U.S. 534, and even though there is ample evidence aside he confession to support the conviction".

Moreover, petitioner was prior and sentenced on a misdemeanor that completed the sentence on. It is clear, moreover that a prior ction may be invalidated upon federal habeas corpus by a prisoner an increased sentence. See United States Ex Rel. Easterling ns, 303 F. 2d 883, 2d Cir. 1962; United States Ex Rel. Durocher lle (1964) 330 F. 2d 303.

CONCLUSION

Thus, the Court is endowed with a wide margin in prior
ions, all of which may guide it to just consideration of the
herein. Therefore, failure to construe the facts of this case
ding to probative merits, is failure to observe constitutional
nds; and consequently, is failure to accord petitioner due pro-
of Law. As compounded by the many authorities herein contained,
ourts do not recognize degree of illegality when illegality app-
but decide the merits of a given case according to applicable
nd Constitutional Provision. Thus to deny petitioner's conten-
without according him a full hearing on the merits of the case,
assert a degree of illegality, for such a course would surely
legal.

PRAYER

Wherefore, your petitioner prays a writ of Habeas Corpus
, directed to said Warden Lawrence E. Wilson, Commanding him as
said, to have the body of said petitioner before your Honor at
e and place herein to be specified, to do and receive what shall
and there be considered by your Honor concerning petitioner, to-
r with the time and cause of his detention, and said writ, and that
aid petitioner, may be rightfully restored to his liberty.

Subscribe and sworn to before me this 11 day of February,

Respectfully submitted

Robert Anderson

Robert Anderson
P.O. Box A-81859
Tamal, California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

PETITION FOR WRIT OF HABEAS CORPUS

PERSONS IN STATE CUSTODY

ert Anderson, A-81859 Name and Prison Number ny) of Petitioner -vs- le of the State of California nes E. Wilson, Warden, Sal. Respondent	CASE NO._____ (To be supplied by the Clerk of the District Court) DOCKET ADM-SF_____ CIV-SF_____ CR-SF 66-85 Entered by K Date 1-19-66

****

INSTRUCTIONS - READ CAREFULLY

In order for this petition to receive consideration by the rict Court, it shall be in writing (legibly handwritten or written), signed by the petitioner and verified (notarized), It shall be set forth in concise form the answers to each icable question. If necessary, petitioner may finish his er to a particular question on the reverse side of the page n an additional blank page. Petitioner shall make it clear hich question any such continued answer refers.

Since every petition for habeas corpus must be sworn to r oath any false statement of a material fact therein may e as the basis of prosecution and conviction for perjury. tioners should therefore exercise care to assure that all ers are true and correct.

If the petition is taken in forma pauperis, it shall include ffidavit (attached at the back of the form) setting forth rmation which establishes that petitioner will be unable to the fees and costs of the habeas corpus proceedings. When petition is completed, the original and one copy shall be ed to the Clerk of the District Court for the Northern Dis- t of California, San Francisco, California.

Place of detention: San Quentin, Prison, Jamal, California

Name and location of Court which imposed sentence: Superior Court, State of California, County of Los Angeles

The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) Superior Court Nos. 231189 and 278150

(b) Sales of Narcotic 11351, H&S Code & 11501, H&S. Code

(c)

The date upon which sentence was imposed and the terms of the sentence:

(a) on or about Oct. 15, 1960 (Prior) County jail

(b) December 16, 1963, for years to life and 5 to life

(c)

Check whether a finding of guilty was made:

(a) after a plea of not guilty:

(b) after a plea of nolo contendre

(c) after a plea of guilty ✓

If you were found guilty after a plea of not guilty, check whether that finding was made by:

(a) a jury

(b) a judge without a jury ✓

Did you appeal from ~~the~~ judgment of conviction or the imposition of sentence?

If you answered "yes" to (7), list:

(a) The name of each court to which you appealed:

I.

II.

III.

(b) The result in each such court to which you appealed:

I. _____

II. _____

III. _____

(c) The date of each such result:

I. _____

II. _____

III. _____

(d) If known, citations of any written opinion or orders entered pursuant to such results:

I. _____

II. _____

III. _____

If you answered "no" to (7), state your reasons for not so appealing:

(a) I am not versed in law

(b) I did not have any money to hire a lawyer

(c) _____

State concisely the grounds on which you base your allegations that you are being held in custody unlawfully:

(a) Interrogation

(b) A guilty plea on a major crime

(c) Priored and resentenced on a misdemeanor

State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) I was interrogated by the arresting officers and I was not advised of my constitutional rights to due process of law.

(b) I was forced to plead guilty to a major crime by my lawyer. Ineffective Counsel.

(c) I was priored with a misdemeanor and resentenced on the prior to 5 years to life.

Prior to this petition have you filed with respect to this conviction:

(a) any petition in a State Court for relief from this conviction? Yes

(b) any petitions in State or Federal Courts for habeas corpus? yes

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions, or applications in this or any other court? No

If you answered "yes" to any part of (12), list with respect to each petition, motion, or application:

(a) the specific nature thereof:

I. Motion For Belated Notice of Appeal

II. Motion For Hearing

III.

IV.

(b) the name and location of the court in which each was filed:

I. District Court, 2nd Appellate District Los Angeles, Calif.

II. Supreme Court of the State of California, San Francisco, Calif.

III.

IV.

(c) the disposition thereof:

I. Denied

II. Denied

III.

IV.

(d) the date of each such dispostition:

I. October 28, 1965

II. December 22, 1965

III.

IV.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

I. Post Card (no opinion)

II. Post Card (no opinion)

III.

IV.

Has any ground set forth in (10) been previously presented to this or any other court, State or Federal, in any petition, motion, or application which you have filed? yes

If you answered "yes" to (14), identify:

(a) which grounds have been previously presented:

I. Due Process of law

II. Ineffective Counsel

III. Misdemeanor Prior

IV.

(b) the proceedings in which each ground was raised:

I. Due Process of Law

II. Ineffective Counsel

III. Misdemeanor Prior

IV. _____

If any ground set forth in said (10) has not previously been presented to any court, State or Federal, set forth the ground and state consicely the reasons why such ground has not been previously presented:

(a)

(b)

(c)

Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction of the imposition of sentence? I did not appeal

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

If you answered "yes" to one or more of (17), list:

(a) the name and address of each attorney who represented you:

I. F. H. Spindell

II. F. H. Spindell

III. F. H. Spindell

(b) the proceedings at which each such attorney represented you:

I. Plea

II. sentencing

III.

If you are seeking leave to proceed in forma pauperis, have you completed the sworn affidavit setting forth the required information (see instructions, page 1 of this form)? yes

Robert Anderson
SIGNATURE OF AFFIANT

Notary Seal
Affixed
on
Original

TE OF CALIFORNIA)
NTY OF MARIN) ss: FORMA PAUPERIS AFFIDAVIT

I, Robert Anderson, petitioner in the above itled cause, am an indigent person, and a citizen of the United tes, over the age of twenty-one (21) years; that he is unable to pay the fee of, or to file a petition for a writ of habeas cor- ; and papers in support thereof, or to hire counsel to prosecute d writ; that he is without funds, or anything of value with which pay or secure the cost necessary to prosecute said petition and proceedings in connection therewith; that affiant believes he a good and just cause of action, and therefore prays that this rt permit him to proceed in the above-entitled cause without pre- ing the costs required by this Court in such cases, and that urity for same be waived by virtue of his indigent circumstances.

I certify under penalty of perjury that the foregoing is true correct.

Robert Anderson
SIGNATURE OF PETITIONER

TE OF CALIFORNIA)
NTY OF MARIN) ss: VERIFICATION

Robert Anderson, being first sworn under oath, pre- ts that he has subscribed to the above and does state that the ormation therein is true and correct to the best of his knowledge belief.

Robert Anderson
SIGNATURE OF AFFIANT

Original

Attorney General

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

Robert Anderson Petitioner VS People of The State of California, Lawrence E. Wilson, Warden, et. al., Respondents	PETITION FOR A WRIT OF HABEAS CORPUS. No. _____

JURISDICTION 28 U.S.C.A. 2254; Rule 83

To: The Honorable Justice and Associate Justices of The above entitled Court.

I, the petitioner in the above cause, who being duly sworn upon oath deposes and says that I am an American citizen and over the age of twenty-one (21) years by birth.

The petition of Robert Anderson, respectfully shows: that he, the said petitioner is unlawfully imprisoned, detained, confined, and restrained of his liberty by the Warden Lawrence E. Wilson, of Marin County, at San Quentin Prison, in the State of California: by virtue of presently complained illegal judgment. That the illegality thereof consist in this, to wit:

Belated Notice of Appeal was filed in the District Court of Appeal, 2nd Appellate District, Los Angeles, County, Oct. 20, 1965, and denied Oct. 28, 1965, by post card, case no. Ext. 65-322. Motion For Hearing was filed in the Supreme Court of California, San Francisco, November 29, 1965, and denied December 22, 1965, by Post Card, case no. 2 Ext. 65-322.

Your petitioner was convicted in the Superior Court of the State of California, in and for the County of Los Angeles, on December 16, 1963, of the crime sales of Narcotic, a violation of 11501 of the Health and Safety Code.

After entering a plea of guilty, petitioner was subsequently priored with a misdemeanor and sentenced to the term prescribed by law, five years to life, and ten years to life and thereafter

received by the California Correctional Authorities where he is presently confined.

STATEMENT OF THE CASE

The alleged crime occured over a period of 3 months. Petitioner's crime partner was given some money to buy narcotics by a police officer. Petitioner was observed by police walking down the street with a lady. Petitioner's crime partner stopped him and his lady friend on the street and had a short conversation. Later his crime partner goes in the hotel, comes out and hand the police some narcotics.

Petitioner was arrested on September 6, 1963, on a secret indictment and charged with eight (8) counts of Sales of Narcotic. Petitioner was compromised by police officers and his attorney on separate occasion to plead guilty, to Count (7) and they would drop all other counts. On December 16, 1963, petitioner pled guilty to count (7) seven and was priored with a misdemeanor that he had did time for at the Honor Rancho. Petitioner was sentenced on his prior and present conviction to: five (5) years to life and ten (10) years to life.

CIRCUMSTANCES

More important, the interrogating officers not only failed to inform petitioner of his right to silence, but they also received exceptionally damaging information before telling him to plead guilty to Count seven (7) and they would drop the other counts. Petitioner was promised a county jail sentence.

ALLEGATIONS

Accordingly, the conduct of interrogating officers has deprived petitioner of his right to due process of law, and thus impeding constitutional provisions of the sixth and fourteenth Amendments to the United States Constitution; and Art. 1, Sec. 13 of the California Constitution.

1. By failure to apprise him of the privilege against self-

incrimination.

2. By failure to furnish counsel during interrogation.

The well known criterion supportive to the facts of this case specifically out-lined in People V. Dorado, 62 A.C. 351 Id 8. "Defendant's confession was not admissible in evidence where it was made during an investigation no longer a general inquiry into an unsolved crime, but focused on defendant who was then in custody, where the authorities did not effectively inform defendant of his right to counsel or absolute right to remain silent, where no evidence established his waiver of these rights, and where the authorities process of interrogation lent to eliciting incriminating statement". Thus, the Courts recent ruling in this area must bear resemblance to the facts of this case.

Accordingly, petitioner rely logically upon the sixth and fourteenth Amendment of the United States Constitution; and Art. 1, Sec. 13 of the California Constitution; for support of his contentions of ineffective representation by counsel. Recent decisions on this subject, infact informs us that counsel has fell short in effective representation: Glenn Rose v. Wilson, (July, 1965), Case no. 43395; Howard Regan v. Wilson, (July 7, 1965), case no. 43169; Reeves v. Georgia, 350 U.S. 85; Brubaker v. Dickson, (9th Cir. 1962), 310 F. 2d 30; Eubanks v. U.S. (9th Cir. 1964), 336 F. 2d 269; People v. McGarvey, 61 Cal. App. 2d 557, 561, "The record indicate that the appearance was rather pro forma 'than zealous and active."

As early as 1929 the Circuit Court of Appeals for the Fourth Circuit quoted the Supreme Court of West Virginia as correctly stating the following rule:

> "Before receiving a plea of guilty in a criminal case, the court should see that it is made by a person of competent intelligence, freely and voluntarily, and with full understanding of it's nature and effect and of the fact on which

it is founded".

Fogue vs. U.S. (9th Cir. 1929), 34 F. 2d 97, 98, In the Federal Courts, this principle has become a rule; "...The Court... shall not accept the plea without first determining that the plea is made voluntarily with understanding of the nature of the charge ..." Rule 11, federal rules of Criminal Procedure, 18 U.S.C.A.

> "This rule is stated in mandatory language and the court is not relieved of the duty which it imposes solely because the accused, as here, is represented by counsel of his choice." (Emphasis added)

U.S. vs Davis (7th Cir. 1954), 212 F. 2d 264, 267; The Court in Davis pointed out real notice of the true nature of the charge against him is a right granted to the accused by the Constitution and it is indispensable to a valid plea. The understanding of the defendant is not a matter for conjecture by the Court. The language of the case implies a duty on the Court to satisfy itself that these requirement are fulfilled.

> "A plea of guilty, unlike a more admission or extra-judicial confession, admits every material fact charged and should not be after proper advise by counsel and with full understanding of the Consequences". Julian v. U.S. (6th Cir. 1956). 236 F. 2d 155, 158.

The increasing concern over the role of the court in accepting a guilty plea is illustrated by the preliminary draft of the proposed amendments to rules of criminal procedure for the United States District Courts. This draft, submitted in December, 1962, by the committee on rules of practice and procedure of the judical conference of the United States proposes the following amendment to rule 11 for the guidance of federal district courts:

> "The Court...shall not accept such plea... without first (a) <u>making such inquiry as may satisfy it that the defendant in fact committed the crime charged and</u> (b) <u>addressing the</u>

defendant personally..." (Proposed Amendment emphasized)

To sanction petitioner's claim of a constitutional violation, see Jackson v. Denc, __ U.S. 84 S. Ct. (June 22, 1964. "It is now axiomatic that a defendant in a criminal case is deprived of due process of law if his conviction is founded in whole or in part, upon an involuntary confession, without regards for the truth or falsity of the confession, Rogers v. Richmond, 365 U.S. 534, and even though there is ample evidence aside from the confession to support the conviction".

Moreover, petitioner was priored and sentenced on a misdemeanor that he had completed the sentence on. It is clear, moreover that a prior conviction may be invalidated upon federal habeas corpus by a prisoner serving an increased sentence. See United States Ex Rel. Esterling v. Wilkins, 303 F. 2d 883, 2d Cir. 1962; United States Ex Rel. Durocher v. La Valle (1964) 330 F. 2d 303.

CONCLUSION

Thus, the Court is endowed with a wide margin in prior decisions, all of which may guide it to just consideration of the facts herein. Therefore, failure to construe the facts of this case according to probative merits, is failure to observe constitutional commands; and consequently, is failure to accord petitioner due process of law. As expounded by the many authorities herein contained, the Courts do not recognize degrees of illegality when illegality appears, but decide the merits of a given case according to applicable law and constitutional provision. Thus to deny petitioner's contentions without according him a full hearing on the merits of the case, is to assert a degree of illegality, for such a course would surely be illegal.

PRAYER

Wherefore, your petitioner prays a writ of Habeas Corpus issue, directed to said Warden Lawrence E. Wilson, Commanding him

as aforesaid, to have the body of said petitioner before your Honor concerning petitioner at a time and place herein to be specified, to do and receive what shall then and there be considered by your Honor concerning petitioner, together with the time and cause of his detention, and said writ, and that he, said petitioner, may be rightfully restored to his liberty.

Subscribed and sworn to before me this 14 day of January, 1966.

Respectfully submitted

Robert Anderson

Robert Anderson
P.O. Box A-81859
Tamal, California

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Subscribed and sworn to before me this 14 day of January, 1966.

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File

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

ROBERT ANDERSON Petitioner v PEOPLE OF THE STATE OF CALIFORNIA, LAWRENCE E. WILSON, Warden, et al Respondents	No. MISC 1303 **ORDER**

Petitioner has submitted to this court a motion seeking permission to file his application for a writ of habeas corpus in forma pauperis. His proposed petition does not allege exhaustion of state remedies, as required by Title 28 USCA §2254 and it contains no allegations which bring the proposed proceeding within any exception referred to in said §2254.

It is, therefore, ORDERED that petitioner's motion to file his application for a writ of habeas corpus in forma pauperis be, and the same is, hereby DENIED.

Dated: January 20, 1966

LLOYD M. BURKE

United States District Judge

I

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

PETITION FOR WRIT OF HABEAS CORPUS

PERSONS IN STATE CUSTODY

[illegible] A-[illegible]	CASE NO._____
ame and Prison Number y) of Petitioner	(To be supplied by the Clerk of the District Court)
- vs -	
of the state of Calif. [illegible], warden, and	
f Respondent	66-940

INSTRUCTIONS - READ CAREFULLY

n order for this petition to receive consideration by the ct Court, it shall be in writing (legibly handwritten or itten), signed by the petitioner and verified (notarized), shall be set forth in concise form the answers to each able question. If necessary, petitioner may finish his to a particular question on the reverse side of the page an additional blank page. Petitioner shall make it clear ch question any such continued answer refers.

Since every petition for habeas corpus must be sworn to oath any false statement of a material fact therein may as the basis of prosecution and conviction for perjury. oners should therefore exercise care to assure that all rs are true and correct.

If the petition is taken in forma pauperis, it shall include idavit (attached at the back of the form) setting forth nation which establishes that petitioner will be unable to he fees and costs of the habeas corpus proceedings. When etition is completed, the original and one copy shall be l to the Clerk of the District Court for the Northern Dis- of California, San Francisco, California.

Place of detention: San Quentin, Prison Tamal, California

Name and location of Court which imposed sentence: Superior Court, State of California, County of Los Angeles

The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) L.C. Nos. 278150 and 231189

(b) 11501 H&S. Code and 11501 H&S Code

(c)

The date upon which sentence was imposed and the terms of the sentence:

(a) on or about October 15, 1960 (Prior) County

(b) jail time and resentenced to 5 years to life.

(c) December 16, 1963; 10 yrs to life

Check whether a finding of guilty was made:

(a) after a plea of not guilty:

(b) after a plea of nolo contendre:

(c) after a plea of guilty: ✓

If you were found guilty after a plea of not guilty, check whether that finding was made by:

(a) a jury.

(b) a judge without a jury ✓

Did you appeal from the judgment of conviction or the imposition of sentence?

If you answered "yes" to (7), list:

(a) The name of each court to which you appealed:

I.

II.

III.

(b) The result in each such court to which you appealed:

I. _____

II. _____

III. _____

(c) The date of each such result:

I. _____

II. _____

III. _____

(d) If known, citations of any written opinion or orders entered pursuant to such results:

I. _____

II. _____

III. _____

If you answered "no" to (7), state your reasons for not so appealing:

(a) I am not versed in law

(b) I did not have any money to hire a lawyer

(c) _____

State concisely the grounds on which you base your allegations that you are being held in custody unlawfully:

(a) Interrogation

(b) A plea of guilty to a major crime

(c) Primed and resentenced on a misdemeanor

State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) I was interrogated by police officers, and I was not advised of my Constitutional rights to due process of law

(b) I was forced to plead guilty to a major crime by my attorney.

(c) I was primed with a misdemeanor and resentenced on the prior to 5 years to life, after the County jail sentence was completed.

Prior to this petition have you filed with respect to this conviction:

(a) any petition in a State Court for relief from this conviction? yes

(b) any petitions in State or Federal Courts for habeas corpus? yes

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions, or applications in this or any other court? No

If you answered "yes" to any part of (12), list with respect to each petition, motion, or application:

(a) the specific nature thereof:

I. Motion for Belated Notice of Appeal

II. Motion for Hearing

III. Habeas Corpus

IV.

(b) the name and location of the court in which each was filed:

I. District Court 2nd App. Dist. Los Angeles, Calif.

II. Supreme Court of the State of Calif. San Francisco, Calif

III. Supreme Court of the State of Calif. San Francisco, Calif

IV.

(c) the disposition thereof:

I. Denied

II. Denied

III. Denied

IV.

(d) the date of each such disposition:

I. October 28, 1965

II. December 22, 1965

III. March 30, 1966

IV.

(e) If known, citations of any written opinions or orders entered pursuant to each such disposition:

I. Post Card (no opinion)

II. Post Card (no opinion)

III. Post Card (no opinion)

IV.

Has any ground set forth in (10) been previously presented to this or any other court, State or Federal, in any petition, motion, or application which you have filed?

If you answered "yes" to (14), identify:

(a) which grounds have been previously presented:

I. Guilty Plea

II. Ineffective Counsel

III. Prior P.C.

IV.

(b) the proceedings in which each ground was raised:

I. Habeas Corpus

II. Habeas Corpus

III. Habeas Corpus

IV.

If any ground set forth in said (10) has not previously been presented to any court, State or Federal, set forth the ground and state consicely the reasons why such ground has not been previously presented:

(a)

(b)

(c)

Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes

(b) your trial, if any? yes

(c) Your sentencing? yes

(d) your appeal, if any, from the judgment of conviction of the imposition of sentence? Did not know that a legal appeal.

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed: no

If you answered "yes" to one or more of (17), list:

(a) the name and address of each attorney who represented you:

I. J. A. Lindell (Plea)

II. J. A. Lindell (Sentencing)

III.

(b) the proceedings at which each such attorney represented you:

I. Plea

II. Sentencing

III.

If you are seeking leave to proceed in forma pauperis, have you completed the sworn affidavit setting forth the required information (see instructions, page 1 of this form)?

yes

Robert Anderson
SIGNATURE OF AFFIANT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

TE OF CALIFORNIA)
: ss: FORMA PAUPERIS AFFIDAVIT
NTY OF MARIN)

I, Robert Anderson, petitioner in the above itled cause, am an indigent person, and a citizen of the United tes, over the age of twenty-one (21) years; that he is unable prepay the fee of, or to file a petition for a writ of habeas pus; and papers in support thereof, or to hire counsel to pro- ute said writ; that he is without funds, or anything of value h which to pay or secure the cost necessary to prosecute said ition and the proceedings in connection therewith; that affiant ieves he has a good and just cause of action, and therefore ys that this Court permit him to proceed in the above-entitled se without pre-paying the costs required by this Court in such es, and that security for same be waived by virtue of his indi- t circumstances.

I certify under penalty of perjury that the foregoing is true correct.

Robert Anderson
(Signature of Petitioner, affiant)

TE OF CALIFORNIA)
: ss: VERIFICATION
NTY OF MARIN)

Robert Anderson, being first sworn under oath, pre- its that he has subscribed to the above and does state that the ormation therein is true and correct to the best of his know- ge and belief.

Robert Anderson
(Signature of Petitioner, affiant)

E: JUNE 8 1966

Notary Seal
Affixed
on
Original

ORIGINAL
FILED

JUN 24 1966

CLERK, U. S. DIST. COURT
SAN FRANCISCO

66-940

JUN 2 1 1966

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

- - - - - - -

ROBERT ANDERSON, Petitioner, vs. PEOPLE OF THE STATE OF CALIFORNIA, L. E. WILSON, Warden, et al., Respondents.	45311 NO. ORDER

Upon reading the affidavit of Robert Anderson in forma pauperis, IT IS ORDERED that said petitioner be and he is hereby allowed to file his petition for writ of habeas corpus without prepayment of fees.

Petitioner is presently confined at the California State Prison, San uentin, California pursuant to what appears to be a 1960 conviction for a violation of §11501 of the California Health and Safety Code. Petitioner recites that he was represented by counsel and entered a plea of guilty. No appeal was taken.

K

It is alleged by petitioner that his counsel forced him to plead guilty; that he was not advised of his constitutional rights by the arresting officers and that he was sentenced on the same charge twice.

This court has consistently followed a policy of liberally construing the pleadings of unskilled petitioners. In this case however, the application contains nothing more than conclusionary allegations unsupported by even the barest statement of facts. As such, this petition fails to comport with the minimum requirements of 28 U.S.C.A. §2242.

Accordingly, this petition for writ of habeas corpus must be and is hereby DENIED.

Dated: June 21 1966

ALBERT C. WOLLENBERG
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

- - - - - - -

ROBERT ANDERSON, Petitioner, vs. LAWRENCE E. WILSON, Warden, People of the State of California, et al., Respondent.	CASE NO. 45311 ORDER

Petitioner seeks a rehearing in the above titled petition. The original application was denied on grounds petitioner failed to state any facts upon which this court could act. The same defect is apparent in the instant motion. Petitioner is advised to concern himself less with attempting to conform his case with the pronouncements of the U. S. Supreme Court and direct his efforts toward writing a brief statement of the facts of his conviction.

Until that is accomplished no consideration will be given to petitioner's claims. It would be well to remember that the burden rests on the shoulders of the one attacking the validity of a conviction to establish a prima facie case.

Accordingly, this motion for rehearing is DENIED.

Dated: July 26 1966

ALBERT C. WOLLENBERG
United States District Judge